

BEFORE THE
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

Citation No. 08-0079-L

DEBORAH Y. COOK
9283 Custer Avenue
Lucerne Valley, CA 92356

OAH No. 2010040116

Vocational Nurse License No.
VN 116882

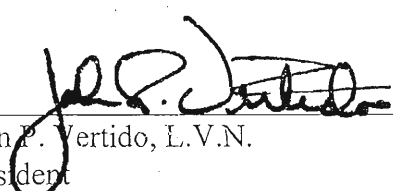
Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Vocational Nursing and Psychiatric Technicians as the final Decision in the above-entitled matter.

This Decision shall become effective on January 13, 2011.

IT IS SO ORDERED this 14th day of December, 2010.



John P. Vertido, L.V.N.
President

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DEBORAH Y. COOK,

Respondent.

Case No. 08-0079-L

OAH No. 2010040116

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 21, 2010, in Victorville, California.

Desiree A. Tulleners, Deputy Attorney General, represented complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California.

Respondent Deborah Y. Cook represented herself and was present throughout the hearing.

The matter was submitted on September 21, 2010.

FACTUAL FINDINGS

1. On August 22, 1983, the board issued to respondent vocational nurse license number VN 116882. Respondent's current license is active and renewed through March 31, 2011.

2. On September 19, 2008, complainant Teresa Bello-Jones, J.D., M.S.N., R.N., Executive Officer, Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs, State of California (complainant), issued to respondent citation number 08-0079-L and assessed respondent a fine in the amount of \$250. On September 22, 2008, the citation and other jurisdictional documents were served on respondent by certified mail. On October 7, 2008, respondent

appealed. On October 29, 2008, the information citation review conference was held. On December 19, 2008, the citation was upheld in an informal citation review conference decision. On December 31, 2008, respondent signed and thereafter submitted a notice of appeal. On September 10, 2010, a notice of hearing was served on respondent.

3. On September 21, 2010, the administrative record was opened, jurisdictional documents were received, sworn testimony was given, documentary evidence was introduced, closing arguments were presented, the record was closed, and the matter was submitted.

4. On September 13, 2007, respondent signed an application for renewal of her license. On the application, respondent stated that she had completed an arthritis pain reduction continuing education class on April 30, 2007. Respondent subsequently sent the application to the board's Sacramento address, where it was received on September 24, 2007.

5. The board thereafter conducted a random audit of respondent's continuing education courses, and requested that she submit certificates of completion for all courses taken during a particular period. The certificate of completion for the course identified in Finding 4 states as follows:

"This certifies the successful completion of the following:

ARTHRITIS PAIN REDUCTION COURSE #HS 896

Began: 08/20/07 Ended: 09/19/2007 Contact Hours: 30"

6. Respondent testified¹ that on March 11, 2007, she paid for the arthritis course and the course provider sent her the materials. Respondent described the course as a "home course," which one is given a year to complete. By April 30, 2007, respondent had read all course materials and completed the answers to all course questions. She did not submit her course documents (answer sheet) to the provider at that time because she was saving up the money to pay the board's license renewal fee. On September 13, 2007, respondent printed out the board renewal application. She entered April 30, 2007, as the completion date for the arthritis course because that was the date when she finished reading the course materials and answering the course questions. On about September 13, 2007, she submitted her course answers to the provider. A couple days later, she phoned the provider and learned that she had passed the course. On September 20, 2007, respondent received the certificate of completion in the mail. On the same date, she purchased a money order for \$185 (the cost of license renewal plus late fee) and sent the money order to the board along with her application.

¹ This finding is based both on respondent's testimony and on several explanatory letters she wrote to the board.

Though the course certificate states that the course “began” on August 20, 2007, respondent testified that it is the practice of that particular provider to backdate the course beginning one month from the course completion date. In support of her testimony that she paid for and began the course in March 2007, respondent submitted a copy of her bank statement for the month in question, which reflects a March 11, 2007, payment to the provider for \$73. Though the statement does not itself establish that respondent began the course in March 2007, it does provide some corroboration of respondent’s testimony to that effect.

7. During her 26 years as a licensed vocational nurse, respondent has never been disciplined by the board.

8. Respondent’s testimony was largely uncorroborated, e.g., she provided no documentation to support her testimony that she received the certificate of completion on September 20, 2007 and that she did not mail in her board renewal application until that same date. Nonetheless, she testified in what seemed a completely sincere manner, and she directly and without hesitation answered all questions on cross examination. In short, her testimony had the ring of truth. Further, that the board did not receive her application until September 24, 2007, at least suggests that she waited a period of time after September 13, 2007, before she sent the application in. Finally, since she did not submit the renewal application until September 2007, an ulterior motive for (falsely) stating on the application that she had completed the course in April of that year was not apparent from the record. In fact, since respondent did in fact pass the course, and since she already had to pay a late fee along with her application, no motive can be discerned for her to falsify the application by stating that she had passed the class on September 13 when she did not in fact pass it until a week later.

For these reasons, respondent’s testimony is credited in its entirety. It is therefore found that she did not falsify her application or attempt to mislead the board on her application. In light of the ambiguous phraseology (“completion date”) used in the renewal application form, it cannot even be found that respondent’s stated completion date was factually incorrect.

LEGAL CONCLUSIONS

1. “The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code § 115.) The burden of proof in this proceeding is thus on complainant.

3. The standard of proof to be applied in disciplinary proceedings involving the suspension or revocation of professional licenses is "clear and convincing evidence standard to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856-857; *Furman v. State Bar* (1938) 12 Cal.2d 212, 229; *Realty Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) However, since this matter involves only an administrative fine, it is concluded that the preponderance of the evidence standard applies. "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.'" (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, *Burden of Proof and Presumptions* § 35 (4th ed 2000).)

4. Business and Professions Code section 2878, subdivision (e) provides that the board may impose discipline on a licensee who makes or gives "any false statement or information in connection with the application for issuance of a license."

5. By reason of Factual Findings 1 through 8, and Legal Conclusions 1 through 4, it is concluded that respondent did not violate Business and Professions Code section 2878, subdivision (e).

Accordingly, there is hereby issued the following:

ORDER

Citation number 08-0079-L issued to respondent Deborah Y. Cook on September 19, 2008, is dismissed.

DATED: 10-19-10



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings